IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.2087 OF 2006

Shri Amrit Sagar Puri .. ..Petitioner

Versus

Overseas Impex Pvt.Ltd. .. ..Respondent

Mr.P.K.Dhakephalkar for petitioner

Mr.P.K.Vyas for respondent

CORAM : P.V.KAKADE, J.

DATE : 28th MARCH 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. Rule, rule made returnable forthwith by consent.

3. The Petitioner-plaintiff has filed this petition against the order passed by the lower court dismissing his appeal being Appeal No.697 of 2000 and confirming the

order passed by the trial court discharging the notice (Misc. Notice No.152 of 2000 in R.A.E. Suit No.596/1632 of 1998) which was application filed by the plaintiff for setting aside the order of dismissal of the suit passed in the said Suit No.596/1632 of 1998 on 17.12.1999 and for restoration of the suit.

4. The Petitioner-plaintiff is permanent resident of Delhi and had filed said suit of the year 1988 against the defendant for possession of defendant's premises on the ground of bonafide requirement. The said suit was adjourned by the concerned court from time to time for hearing. The matter came to be adjourned to 17.12.1999 on that date the plaintiff could not remain present and his application for adjournment was rejected and suit came to be dismissed for default.

. The plaintiff has filed an application for setting aside the order dated 17.12.1999 vide Misc. Notice No.252 of 2000 stating that there was a reason for not attending the matter on the date on which the said suit was dismissed. According to him, he had informed the advocate about the same and he had applied for adjournment. He stated that he returned back to India on

17.12.2001 but he felled sick and therefore, he could not remain present in the court. He submitted that he applied for certified copy of the order dated 17.12.1999 but could not get till date of application came to be filed.

5. The respondent-defendant contested the said application on various grounds submitting that no such explanation was given by the petitioner and as such sought dismissal of the application.

6. The trial court after hearing both the parties came to the conclusion that there was no sufficient cause established by the petitioner and therefore, notice was discharged and application came to be rejected.

. The appeal was preferred. The lower appellate court after hearing both the parties concurred with the findings recorded by the lower court and dismissed the appeal. Hence the present writ petition.

7. At the outset, it may be noted that it is not in dispute that the petitioner was out of India and had returned on 17.12.1999. He has also produced the medical

certificate showing that there after he was not well for a few days. The record also shows that on the date the petitioner return to India i.e. on 17.12.1999, he could not attend the court on the ground that he was not well for which purpose medical certificate supports the plea. It further appears that some relative of the plaintiff called the advocate for the plaintiff on phone stating that his daughter was ill and therefore, he could not attend the court. The trial court has taken strong exception to his obvious discrepancy in order to hold that there was no sufficient ground for plaintiff to not attend the court on that date. In my considered view, taking into account then discrepancy occurred obviously due to the communication gap because it is not the case of anybody that plaintiff himself contacted his advocate giving some other reason except for his illness and therefore, it was not proper on the part of the trial court to make much ado about the same.

8. Perusal of the lower appellate court’s order also shows that while endorsing reasoning adopted by the trial court, the appellate court has concluded that the said reasons are not sufficient grounds to restore the suit by setting aside the order of dismissal. However, I prefer

to disagree with both the courts below, especially taking into account the fact that the petitioner returned from USA to India on 17.12.1999, which was the very date of hearing of the suit at Mumbai. The medical certificate shows that the petitioner was ill for two days on his return to India and therefore, obviously he could not attend the date on 17.12.1999, which in my view, would form sufficient ground to set aside the order of dismissal. Further it must be noted that it is always desirable that parties could be given opportunity for effective adjudication on merits especially when the plaintiff has filed the suit for possession of the premises on bonafide requirement.

9. The learned counsel for the respondent brought to my notice that subsequently the petitioner had filed suit under the new act on the same ground and therefore, this application should not be entertained. However, it is pointed out by the learned counsel for the petitioner that the impugned suit was not only for on the ground of bonafide requirement but also on various other grounds and therefore, it is required to be prosecuted as per law. Therefore, taking into account of the facts and circumstances, I am inclined to allow the petition.

Hence, rule is made absolute. The order passed by the lower appellate court dated 8.10.2001 as well as the trial court dismissing the suit is hereby set aside. The suit is restored to the file for effective adjudication on merits. The trial court is directed to proceed with the suit according to law from the stage at which was dismissed. This order is conditional in the sense that the petitioner shall pay amount of Rs.5000/= as costs. Out of which half of the amount shall be donated to the State Legal Authority and remaining half shall be paid to the respondent within four weeks.